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THIRD-PARTY SUBMISSION IN PUBLISHED APPLICATION
per 37 C.F.R. § 1.99

Application No.:	10/612307
App. Publication No.:	2005-0003884
Applicants:	Mark Meyer
Filed:	July 2, 2003
For:	Lottery Game Method
Group Art Unit:	3714
Examiner:	Robert E. Mosser

Dear Sir or Madam:

The publication is submitted per 37 C.F.R. § 1.99. It is relevant to U.S. Patent Application Publication No. 2005-0003884 for pending U.S. Patent Application No. 10/612307. This submission complies with the requirements of 37 C.F.R. § 1.99 and the application is still pending.

Postcard
Enclosed is a self-addressed postcard per § 1.99(f). Please acknowledge receipt of this submission.

Copy served by first class mail
Per 37 C.F.R. § 1.99(c) and § 1.248(a)(4), a copy of this submission was sent on March 15 , 2006 via first class mail to the applicant's attorney or agent at:

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> 1201 West Peachtree Street, Suite 3000
> Atlanta, GA 30309-3450

Publication could not have been submitted to the Office earlier
§ 1.99(e) requires a submission be filed within two months from the date of publication of this application (January 6, 2005), unless the submission could not have been submitted to the Office earlier and it is accompanied by the processing fee set forth in § 1.17(i). The publication provided in this submission was not published until after January 6, 2005 and could not have been submitted to the Office earlier.
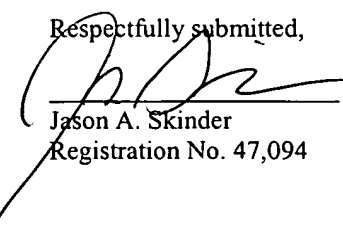
Fee
Enclosed is a money order for $310.00 which includes the processing fee under § 1.17(p) ($180.00) and the fee under § 1.17(i) ($130.00) as required for a belated submission.

List of the publication submitted for consideration by the Office

1. A published document entitled "Applicant Arguments or Remarks Made in an Amendment," 16 pages, published via the Public PAIR Portal for U.S. Patent Application 10/272125 (IFW tab, mail room date 08-08-2005),
    http://portal.uspto.gov/external/portal/!ut/p/_s.7_0_A/7_0_CH/.cmd/ad/.ar/sa.getBib/.c/6_0_69/.ce/7_0_1E T/.p/5_0_18L/.d/1?selectedTab=ifwtab&isSubmitted=isSubmitted&dosnum=10272125#7_0_1ET.

Per § 1.99(d), this submission only provides a copy of a pertinent portion of the document (only pages numbered 19-22) as it was published via the Public PAIR Portal and does not include any explanation of the document or any other information.

Respectfully submitted,

(signature)

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March 15 , 2006

MAR 17 2006

A.2. Mischaracterization of U.S. Patent No. 6,497,408 to Walker et al.

The Meyer 10/612307 Amendment responds to Section 103(a) rejections that are based on U.S. Patent No. 6,497,408 to Walker et al. (the "Walker '408 patent").

The present application is a continuation application of the Walker '408 patent. Accordingly, any publicly-available statements made in the Meyer 10/612307 Amendment as to how one having ordinary skill in the art would interpret the disclosure of the Walker '408 patent are relevant to examination of the present application.

The Meyer 10/612307 Amendment makes the following statements with respect to the Walker '408 patent:

> The Office Action further stated that Walker et al. teaches the purchase of multiple sets of number [sic] for a lottery.... Applicants respectfully disagree.

[page 10];

> Applicants submit that this element of, for at least some of the value payouts, the value payout being different from a sum of a plurality of individual value payouts is not disclosed by Powerball or Walker et al., either individually or in combination....

[page 11]; or

> Walker et al.,...[does] not disclose a value payout that is greater than the sum of the plurality of individual value payouts.

[page 12].

As we best understand the Meyer 10/612307 Amendment, the following is an example of the above "element" that Meyer et al. state is not disclosed in the Walker '408 patent:

> According to one exemplary payout table [of the Meyer application], the player would get $5 for match [sic] three numbers in the first set and $5 for matching three numbers in the second set. However, because the player matched numbers in both sets in a single play, the player will get $50 instead of simply 2 x $5 as would occur in the Powerball.

[page 11].

Thus, the Meyer 10/612307 Amendment effectively states that one of ordinary skill in the art reading the Walker '408 patent would conclude that it could not disclose the following:

(A)   a purchase of multiple sets of numbers for a lottery;

(B)   a suggestion of the following example scenario:

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(i) a player would win a payout of $5 for a first set of player numbers for matching three of a set of winning numbers;

(ii) a player would win a payout of $5 for a second set of player numbers for matching three of the same set of winning numbers; and

(iii) in some circumstances, giving a payout (*e.g.*, $50) to the player that is different from $5 + $5 = $10, which is the sum of the respective individual payouts for the two winning sets of player numbers based on the same set of winning numbers;

or

(C)   a payout as in (B)(iii) is greater than the sum of the plurality of individual value payouts.

We disagree.

First, with respect to (A), the Walker '408 patent clearly describes the purchase of multiple sets of numbers for a lottery. For example, the Background section describes an illustrative example in which if a player purchases five "quick-pick" sets of numbers, or entries, for a 6/49 Lotto drawing, a lottery terminal could randomly select five sets of six numbers and then print a ticket listing the five sets of numbers. [Column 1, lines 38-65]. In another example, "[a]ccording to one embodiment of the invention, a player first purchases at least one primary lottery drawing entry." [Column 14, lines 29-31].

With respect to (i) and (ii) of the example scenario (B), we note that even a cursory review of the Walker '408 patent would establish that it discloses determining individual payouts (including cash payouts) for winning entries based on the same set of winning numbers, such as for the same drawing. See, for example, the Background at Column 2, lines 4-8 ("In a typical 6/49 Lotto-style lottery drawing, an entry 'wins' an award in the drawing if at least three of the entry numbers match three of the numbers drawn in the lottery drawing."); Column 12, lines 54-57 ("if three of the five tickets of the registered group each qualified for awards of $3 apiece from the primary lottery drawing.").

Part (iii) of the example scenario (B) requires, as we best understand the example of the "element" described in the Meyer 10/612307 Amendment, that at least some determinations of a payout have to be different from a sum of a plurality of respective individual payouts for winning sets of player numbers. The Walker '408 patent discloses that a meta-game award (a type of payout) may be provided to a player (*e.g.*, upon completion of a lottery drawing if a plurality of lottery entries qualifies for a meta-game award). See, *e.g.*, Column 3, lines 5-8. The

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Walker '408 patent discloses the subject matter (iii) in at least three ways: (a) paying out an award that is of a type different from a total cash prize for a plurality of individual winning sets of numbers; (b) paying out an award having a value that is different from a sum of respective individual prizes for winning sets of numbers; and (c) paying out to a player both a (non-zero) meta-game award and a (non-zero) total of respective individual prizes for winning sets of numbers, which paying out is obviously different from paying out only the total of respective individual prizes.

First, a meta-game award for a plurality of sets of numbers may be of a different type of award than the prizes for individual winning sets of numbers. For example, the Walker '408 patent contemplates that prizes for individual entries may be cash prizes (as in the example scenario (B)) but a meta-game award may include non-cash prizes such merchandise, services, and/or credit points toward merchandise or services. See, e.g., Column 9, lines 39-43 ("For example...the player qualifies for a meta-game award even if entries of his group win a total of $29 in the primary lottery drawing"); FIG. 3 (indicating that 260 credit points is a possible meta-game award). Accordingly, the Walker '408 patent discloses a payout (e.g., credit points) for a plurality of sets of numbers that is different from exactly the sum of a plurality of respective individual cash payouts for winning sets of player numbers (e.g., a cash prize).

Second, even if a meta-game award for a plurality of sets of numbers is the same type as the prizes for individual winning sets of numbers (e.g., all awards are cash prizes), the value of a payout for the meta-game is clearly described in the Walker '408 patent as being potentially different from exactly the sum of a plurality of respective individual payouts for winning sets of player numbers. See, e.g., Column 9, lines 39-43 ("For example...the player qualifies for a meta-game award even if entries of his group win a total of $29 in the primary lottery drawing"); FIG. 3 (indicating that $13.15 is a possible meta-game award). Accordingly, the Walker '408 patent describes, in at least one example, a payout of $13.15 for a plurality of sets of numbers. $13.15 is different from $29, which in the example is the sum of a plurality of respective individual cash payouts for the winning sets of player numbers.

Third, as in the example described just above, the Walker '408 patent clearly discloses that a player may receive both a meta-game award and a total prize that is a sum of respective prizes won for each individual winning set of numbers. See also, e.g., Column 9, lines 19-29 (allowing for "a player to win a meta-game award even if one or more primary lottery drawing entries of the player's group qualifies for an award in the primary lottery drawing. In this embodiment, a player could qualify for a meta-game award so long as the total prize won by the primary lottery

drawing entries of the group in the primary lottery does not exceed a certain threshold.") (emphasis added). Accordingly, the Walker '408 patent describes, with respect to some embodiments, paying out, for a plurality of winning sets of numbers, both a meta-game award (*e.g.*, $13.15) and a "total prize" (*e.g.*, $29) that is a sum of respective awards for individual sets of numbers. This clearly discloses that at least some determinations of what should be paid out to a player (*e.g.*, $13.15 (meta-game award) + $29 (sum of individual awards) = $42.15) is different from exactly a sum of individual payouts (*e.g.*, $29).

With respect to (C), the Walker '408 patent clearly describes that a payout may be greater than the sum of the plurality of individual value payouts. In one example, a player may qualify for a meta-game award of $7.27 where the total primary lottery drawing payout for a plurality of sets of numbers is $5. See, *e.g.*, Column 9, lines 18-36; FIG. 3. $7.27 (a payout) is greater than $5 (a sum of individual payouts). In another example, as discussed above, the Walker '408 patent describes, with respect to some embodiments, paying out, for a plurality of winning sets of numbers, both a meta-game award (*e.g.*, $13.15) and a total of respective awards for individual sets of numbers (*e.g.*, $29). This clearly discloses that at least some determinations of what should be paid out to a player (*e.g.*, $13.15 (meta-game award) + $29 (total of individual awards) = $42.15) is greater than a sum of individual payouts (*e.g.*, $29).

A.3.   Conclusion

Our remarks are limited to disputing some of published statements made in the Meyer 10/612307 Amendment about the scope of the disclosure of the present application (by way of reference to its parent application, now the Walker '408 patent). We have not construed any of the specific claims or claim language of the Meyer application in light of its specification, nor have we addressed, much less provided an opinion regarding, the patentability of any claim of the Meyer application or the propriety of any pending rejection or assertion by the Examiner of the Meyer application.

If the Examiner wishes to discuss any portion of the specification or claims of the present application in light of any of the published statements made in the Meyer 10/612307 Amendment, we encourage the Examiner to contact our representative at the Examiner's convenience.